UNION PACIFIC RESOURCES CO.
LEVINSON PARTNERS CORP.

IBLA 95-593 Decided June 30, 1999

Appeal from a decision by the Director, Minerals Management Service, affirming a decision by the Regional Director, Gulf of Mexico, denying a request for a retroactive suspension of production. MMS-93-0888-OPS.

Affirmed.

1. Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases

When appellants failed to request a suspension of operations before their lease expired, there was nothing in existence which the Minerals Management Service could suspend.

2. Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases

A lessee cannot informally designate a working interest owner as its operator. A formal designation is required because it signifies the lessee's intent and agreement that the named operator is authorized to act on the lessee's behalf and to fulfill the lessee's obligations under the statute, the regulations, and the lease. 30 C.F.R. §§ 250.8 and 250.13(c).

3. Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases

When appellants' lease expired at the end of its primary term, it expired as a matter of law and no decision or notice to the lessee was required to effect the expiration thereof. In such case, a subsequent decision purporting to approve a Sundry Notice for reworking operations was a nullity.

4. Outer Continental Shelf Lands Act: Generally--Outer Continental Shelf Lands Act: Oil and Gas Leases

Acceptance of minimum royalty payments cannot extend a lease beyond its primary term. As a matter of law, only production, drilling, or approved well-reworking operations can continue a lease beyond its primary term.

APPEARANCES: Anthony C. Marino, Esq., New Orleans, Louisiana, for Appellants; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard W. Chalker, Esq., Sarah L. Inderbitzen, Esq., Lisa K. Hemmer, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE PRICE

Union Pacific Resources Company (Union Pacific) and Levinson Partners Corporation (Levinson) have appealed the April 3, 1995, Decision of the Director, Minerals Management Service (MMS), affirming a July 6, 1993, decision by the Regional Director, Gulf of Mexico (RDGOM), denying a request for a retroactive suspension of production (SOP) for Federal Offshore Lease OCS-G-9055.

Federal Offshore Lease OCS-G-9055, Galveston Block A-125, was issued to Union Pacific effective December 1, 1987, for an initial 5-year period through November 30, 1992. Union Pacific held a 100-percent interest in the lease and filed an initial Plan of Exploration (POE) on December 28, 1987, proposing to drill five wells, commencing in April 1988. Union Pacific did not drill any well, and on June 15, 1990, it designated Wayman W. Buchanan, Inc. (Buchanan), the operator of the lease. On December 18, 1990, MMS approved three assignments of operating interests, none of which affected record title to the lease. Union Pacific assigned a 100-percent interest in the operating rights to those depths and formations from the surface to 100 feet below the stratigraphic equivalent of 5,020 feet true vertical depth to Wayman W. Buchanan Offshore, Inc. (Buchanan Offshore). Buchanan Offshore assigned a 32.75-percent interest to its parent Corporation, Buchanan, and a 6.25-percent interest to Levinson Partner's Corporation (Levinson).

Buchanan filed a Revised POE and an Application for Permit to Drill (APD) the first well under the Revised POE on June 18, 1990. The Revised POE was approved on July 25, 1990, the APD was approved by RDGOM on July 26, 1990, and in August 1990 Buchanan installed a platform and drilled a single well. Production commenced in November 1990. Production ceased in August 1991, and despite attempts to restore production from the well, production was never resumed. On August 19, 1991, Buchanan submitted a Sundry Notice to Workover the well to shut off water production and restore gas production. That Notice was approved by MMS on August 23, 1991, but the well was shut-in on September 14, 1991, after a workover procedure failed. (Ex. 3 to MMS Field Report dated November 12, 1993, Solich

Affidavit, ¶ 4.) 1/ Buchanan submitted another Sundry Notice to Workover on September 24, 1991, also to shut off water production and restore gas production, and this was approved by RDGOM on September 30, 1991. Following approval of the September 24 Sundry Notice, Buchanan inspected the well by helicopter on a monthly basis. (Ex. 3, Solich Affidavit, ¶ 4.) On September 18, 1992, Buchanan transferred its operating rights to Levinson. (Ex. 3, Solich Affidavit, ¶ 5.)

In September 1992, Levinson hired Operating & Consulting Services, Inc. (O&C), to assist in a proposed workover of the well. Union Pacific had not designated Levinson as its operator or filed any other notice with MMS concerning Levinson acting as operator. (Decision at 9; MMS Answer at 2.) On September 21, 1992, O&C prepared a memorandum to Levinson indicating the steps O&C would take to workover the well. (Ex. 3, Solich Affidavit, ¶ 8.) O&C visited the well on November 12 and 18, 1992, evidently to begin the workover procedure. (Ex. 3, Solich Affidavit, ¶ 9; MMS Answer at 2-3.)

On November 17, 1992, 2 weeks prior to expiration of the lease, Buchanan sent a letter to Levinson in which Buchanan resigned as the operator of the lease and advised that a successor operator should be named immediately. (Ex. 2.) On December 4, 1992, however, RDGOM received a Sundry Notice to Workover dated December 3, 1992, signed by Buchanan's Operations Manager, which sought approval of a swabbing procedure designed to bring the well back on line. RDGOM approved the Sundry Notice on December 8, 1992, but on December 15, 1992, Buchanan notified RDGOM that it had resigned as operator and that Levinson had "taken over" the lease on December 1, 1992. Buchanan also requested that it be released from the bonding requirements related to the lease. (Ex. 12.) On December 8, 1992, Buchanan submitted a Designation of Operator form to MMS erroneously naming O&C the new operator. (Statement of Reasons (SOR) at 4.)

On January 28, 1993, RDGOM met with representatives of O&C and Alta Energy (Alta), the parent corporation of Levinson, to propose a retroactive SOP, to be pursued on the ground that there were ongoing activities in the 90 days prior to November 30, 1992, the effect of which would be to automatically extend the lease. (Decision at 7; Ex. 15.) In a January 29, 1993, letter to Buchanan, RDGOM rescinded its December 8, 1992, approval of the Sundry Notice, because the lease had previously terminated for lack of production. (Ex. 32.) On March 8, 1993, RDGOM received a Designation of Operator form from Union Pacific with a covering letter dated March 5, 1993, naming Levinson as the operator of the lease. (Ex. 13.) No explanation for this delay appears from the record and none is offered by Appellants. (SOR at 4-5, n.2.)

1/ The Field Report included many numbered exhibits which are cited in this opinion. Appellants' Memorandum in support of their appeal to the MMS Director and its own numbered attachments and affidavits (Memorandum) were appended as Exhibit 3. We will cite the Memorandum as Exhibit 3, and when citing its attachments, we will cite the tab number or affidavit.

Alta followed its verbal request for a retroactive SOP with a written request dated March 12, 1993. However, on March 25, 1993, RDGOM informed Alta that RDGOM would take no action on Alta's request, because neither Alta nor Levinson was the designated operator or lessee of record. (Ex. 15.) Also on March 25, 1993, Union Pacific sent a letter to MMS advising that it "concurred" in Levinson's March 12, 1993, request for a retroactive SOP. (Ex. 16.)

On April 30, 1993, RDGOM acknowledged the release of Buchanan and its bond as of April 8, 1993. (Ex. 3, Tab 9.)

On May 24, 1993, RDGOM received Union Pacific's May 10, 1993, request for a retroactive SOP and recognition of Levinson as the operator of the lease. To support its request, Union Pacific argued that it and Levinson should not be punished for Buchanan's failures during a period of transition and difficult circumstances; that it was unlikely that the remaining reserves would be developed if the SOP was not granted; and that Levinson's attempts to restore the well constituted production and workover activities in the 90-day period before the lease expiration date that were sufficient to avoid expiration. (Ex. 17.) In addition, however, the request included a paragraph that purported to relieve Union Pacific of its ultimate responsibility for Levinson's activities as the operator. (Ex. 17 at 4.) The disclaimer properly was rejected by MMS, and Union Pacific submitted a revised request without the disclaimer on June 28, 1993. (Ex. 20; Decision at 8-9.) The parties met again on June 8, 1993, to discuss the SOP. (Decision at 8-9.) The June 28 request was denied by RDGOM on July 6, 1993, and Union Pacific and Levinson appealed to the MMS Director. In denying the request, the RDGOM stated:

> We have reviewed the circumstances relating to this situation and find that at the time of lease expiration there was no administrative oversight on the part of the lessee of record or designated operator, and there is no reason to rule the lease in question not to have expired. Therefore, your request for a retroactive SOP for Lease OCS-G 9055 cannot be approved, and the Minerals Management Service deems the lease expired as of November 30, 1992.

(Ex. 1 at 1-2.)

Before the MMS Director, Union Pacific and Levinson reiterated their principal arguments: that they should not be responsible for the omissions of Buchanan in failing to file required notices or to submit a request for an SOP (Ex. 3 at 11, 14-16, 22-23); that Buchanan's, Union Pacific's, and Levinson's omissions were mere administrative oversight, in part due to Levinson's lack of familiarity with MMS regulations (Ex. 3 at 4, 8, 12, 15); that other companies had been granted retroactive SOP's in similar circumstances (Ex. 3 at 13-14); that Levinson had expended $60,000 in a good faith effort to return the well to productive status and was unable to do so due to circumstances beyond its control (Ex. 3 at 4-7, 10-11); that Levinson's activities constituted diligent well-workover activities sufficient to extend the initial term of the lease as provided by 30 C.F.R. § 250.13(a) (Ex. 3 at 21-24); and that it was unlikely the remaining reserves otherwise will be developed. (Ex. 3 at 17-18.) In addition, Union Pacific and Levinson argued that the RDGOM's decision failed to apprise them of the basis for rejecting their request. (Ex. 3 at 10.)

Relying on this Board's decision in Jerry Chambers Exploration Co., 107 IBLA 161, 163 (1989), wherein it was held that a lessee may designate an operator to act for the lessee in matters relating to lease operations but is not relieved of its ultimate responsibility for compliance with the lease terms, the Director rejected Union Pacific's argument that it should not be held responsible for Buchanan's acts and omissions. (Decision at 10-11.) She also rejected the assertion that Union Pacific had been diligent in developing the lease, basing her rejection upon the record of activity on the lease in the 14 months preceding the expiration date, and concluded that Union Pacific essentially had ignored the lease.

In her view, this conclusion was buttressed by the fact that neither Union Pacific nor its operator had filed the notices required by 30 C.F.R. §§ 250.13(c) and 250.103 to have proposed operations approved. (Decision at 13.) Although the Director acknowledged that Levinson had hired O&C and spent $60,000 purchasing replacement parts for the well and developing procedures designed to restore the well's productivity, she noted that the parties had failed to obtain the required approval to do so, and thus those activities were unauthorized. (Decision at 14.) She accordingly found the facts of other cases in which SOP's had been granted to be distinguishable from the case before her. (Decision at 11-14.) Lastly, she rejected the argument that the parties should be excused from their omissions because of Levinson's lack of knowledge of MMS regulations, citing the well-established rule that knowledge of the law and implementing regulations is imputed. (Decision at 14.) The Director therefore concurred in the RDGOM's conclusion that the requested retroactive SOP should be denied.

Before this Board, Union Pacific and Levinson advance the same arguments in an effort to demonstrate that the parties' omissions constituted mere administrative oversight rather than lack of diligence, and to show that they had been diligently developing the lease 90 days before its expiration date, so that such activity served to extend the lease term. In the alternative, they argue that their administrative oversight was due, in large part, to circumstances beyond their control, that MMS contributed to the delays reflected in the record, that they have shown good faith in their efforts to resume production from the lease and thus should not be punished for doing so, and that they should have been granted the requested SOP in accordance with MMS' treatment of other lessees or operators. Before considering the merits of the arguments thus summarized, it would be useful to examine the regulations at issue or implicated in this appeal.

The regulation at 30 C.F.R. § 250.10 2/ stated:

> (a) The Regional Supervisor may, on the Regional Supervisor's initiative or at the request of the lessee, suspend or temporarily prohibit production or any other operation or activity on all or any part of a lease (suspension) when the Regional Supervisor determines that such suspension is the national interest and that the suspension is necessary as follows:
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> * * * * * * *
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> (4) To allow reasonable time to commence drilling operations when good faith efforts are prevented by reasons beyond the lessee's control, such as unexpected weather or unavoidable accidents;
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> * * * * * * *
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> (b) The Regional Supervisor may also direct or, at the request of the lessee, approve a suspension of any operation or activity, including production, because of the following:
>
> (1) The lessee failed to comply with a provision of any applicable law, regulation, or order, or provision of a lease or permit;
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> * * * * * * *
>
> (f) When the Regional Supervisor orders or approves a suspension pursuant to paragraph (a), (b), or (c) of this section, the term of the lease shall be extended for a period of time equal to the period the suspension is in effect * * *.

The regulation at 30 C.F.R. § 250.13(a) provided:

> Producing, drilling, or well-reworking operations on a leased area shall continue the lease in effect so long as the producing, drilling, or well-reworking operations are conducted no more than 90 days before the expiration of the primary term. A lease continued beyond its primary term by production, drilling or well-reworking operations shall be continued in effect by production, drilling, or well-reworking operations which are commenced on or before the 90th day after the date of completion of the last production, drilling, or well-reworking operation. No time lapse in production, drilling, or well-reworking operations of greater than 90 days shall continue the lease in effect unless production or other operations on the lease have been suspended pursuant to [section] 250.10.

2/ The regulations have since been revised. Citations in this decision are to the 1993 regulations in effect at the time of the Director's decision.

Paragraphs (b) and (c) thereof further provided:

> (b) * * * the Director may approve such other time periods between operations, not to exceed 180 days from the date of the last production, drilling, or well-reworking operations or beyond 180 days where environmental conditions warrant, provided the Director determines that such lease extension is in the national interest and would be in the interest of conservation, or prevent waste and protect correlative rights.
>
> (c) Nothing in th[is] section obviates the necessity of obtaining approval of plans or notices required by this part.

(Emphasis added.)

In their SOR, Appellants assert that the Director failed to consider important aspects of the case. In particular, they make much of the fact that the Director referred to Buchanan's November 17, 1992, letter to Levinson announcing its resignation as operator as a "warning" to the operating rights owner. They contend that if the letter was a warning, it should have been sent to Union Pacific as the lessee of record. (SOR at 2.) Appellants note that, notwithstanding Buchanan's letter of November 17, 1992, MMS approved Buchanan's December 3, 1992, Sundry Notice for a proposed workover, further noting that there is no explanation of why the Notice was approved, only to be rescinded 2 months later, when MMS should have been cognizant of the lease anniversary date. (SOR at 3.)

Appellants note that although the decision states that "it was appropriate for MMS to inform Appellant Union Pacific that the lease had terminated as of November 30, 1992," the "decision letter" was not addressed to Union Pacific or Levinson. They note that as of January 28, 1993, the date of the letter rescinding approval of the last Sundry Notice, Buchanan had "effectively resigned" as operator. (SOR at 3.) In the same vein, they also question why MMS Royalty Management accepted the minimum royalty payment from Alta on November 25, 1992, as it did 1993 and 1994, 3/ and why RDGOM accepted and approved an operator's bond submitted by Levinson on December 28, 1992. In addition, they point out that RDGOM did not act on Buchanan's December 15, 1992, resignation as operator until April 30, 1993, at which time RDGOM stated that the period of liability was considered to have terminated effective April 8, 1993. Appellants observe that MMS would not have released the bond prior to ensuring that the obligations of the bond were fulfilled. 4/ (SOR at 4.)

3/ Appellants attached copies of payment records for those years.

4/ They also complain that the Director failed to mention that Buchanan had submitted a Designation of Operator form when Buchanan had no authority to name a successor operator. Since Appellants themselves admit that Buchanan had no right to submit the form, it was a nullity, and we perceive no reason why the Director should comment on it or error in failing to do so.

Appellants further claim that MMS inconsistently applied the regulations, confusing Levinson and Union Pacific with "mixed signals" from December 1992 through June 1993 by encouraging the submission of SOP requests. It is asserted that RDGOM never indicated that it would not have given retroactive effect to the SOP request if Union Pacific had filed the application. (SOR at 3.) Moreover, it is argued that once Union Pacific submitted its SOP request by concurring in Levinson's request on March 25, 1993, MMS should have acted on it, contending that this concurrence constituted actual notice to MMS of the change in operators. (SOR at 5-6.) Thus, MMS' failure to even respond to the March 25 request is said to have caused the further delay between March and May 1993. (SOR at 5, 7.) They contend that it is only because RDGOM refused to consider the March request that it became necessary for Union Pacific to submit a request as lessee by letter dated May 10, 1993. It is contended that Appellants have acted with at least as much diligence as lessees and operators who have been granted retroactive SOP's, and they conclude that there is no reason to deny them similar treatment. (SOR at 6.)

To support their view, Union Pacific and Levinson note two cases in which MMS granted retroactive SOP's to companies, even though both filed well after their leases had expired. Pennzoil Exploration and Production Company was granted a retroactive SOP on January 29, 1993, 4 months after the lease expired. In the other case, Torch Operating Company (Torch) requested an SOP 2-1/2 months after lease expiration. Appellants argue that they were more diligent than Pennzoil and Torch because Levinson and Union Pacific's retroactive SOP requests were filed less than 4 months after expiration of the lease. (SOR at 8-9.) They also contend that in prior retroactive SOP decisions "MMS has looked to the diligence in `developing the lease,' not the diligence in the handling of mere paperwork." (SOR at 9.) Appellants claim that despite the aftermath of Hurricane Andrew, winter weather conditions and financial disarray, they planned and carried out an extensive workover project. As they view the matter, MMS' only legitimate criticism is that they should have filed the change of operator form and SOP request more promptly. (SOR at 9.)

In addition, Appellants recast the issues on appeal as merely a matter of "form over substance, or in this case, paper versus actual diligence." (SOR at 7.) They support this assertion by arguing that the Director failed to recognize Levinson's standing as a party adversely affected by the RDGOM decision, effectively denying Levinson its "due process rights," this being the right to pursue the SOP, even though neither Union Pacific nor Levinson timely complied with the regulation governing changes in operators. (SOR at 7.)

Appellants next devote considerable effort to arguing that MMS erroneously concluded that the retroactive SOP should not be granted on the ground of lack of diligence. Appellants take the position that Union Pacific acted through its operator, arguing that diligence may be shown by the operator's performance. (SOR at 6.) To lend credence to the assertion, Appellants argue that Levinson's actions and interests should be taken into account because it is the party most adversely affected by the decision and that Levinson was an "operator" within the meaning of

30 C.F.R. § 250.2, because it had "control or management of operations on the leased area." (SOR at 10.) They argue that definitions found at 43 C.F.R. § 3100.0-5 support their contention that Levinson has a vested property right in the lease. In particular, they cite 43 C.F.R. § 3100.5(d), which stated that an approved operating rights owner had the right "to enter upon the leased land to conduct drilling and related operations." (SOR at 11-13 (Appellants' emphasis).) Appellants thus object to the Director's characterization of "Levinson as simply `a party holding an operating rights interest.'" (SOR at 13 quoting Decision at 2.) They argue that the assignment from Buchanan to Levinson approved by MMS constitutes recognition of Levinson's rights and obligations.

They further claim that it is not uncommon for the Designation of Operator form to be filed with MMS some time after the parties reach agreement, and that although the form provides that the lessee shall notify MMS promptly of any change in operator, no regulation requires that the notice shall be filed immediately as the Director's decision suggests. (SOR at 6, 12, 13.) Thus, Appellants submit that filing the Designation of Operator form should not be accorded greater significance than actual diligence on the part of the lessee's agent and actual notice of the change in operators, and that the purpose of a retroactive SOP is to provide relief to those who have inadvertently filed late. (SOR at 6-7.)

Appellants' final contentions are that the refusal to grant the requested SOP to avoid lease expiration is contrary to the policies enunciated in the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1332 (1994), in that in all likelihood the remaining reserves never will be recovered (SOR at 13), and that MMS failed to consider less drastic alternatives.

In its Answer, MMS cites the applicable regulation, which provides that "[n]o well-workover operations except routine ones, as defined in 250.91 of this part, shall begin until the lessee receives written approval * * *, 30 C.F.R. § 250.103(a), and also requires that approval for non-routine operations shall be requested on Form MM-124, Sundry Notice and Reports on Wells." It is noted that in September 1992 Levinson hired O&C to assist in workover of the well, and that this was done without Union Pacific's designation of Levinson as its operator or MMS approval. MMS also points out that when O&C visited the well in September 1992 and prepared a memorandum to Levinson indicating the steps it would take to perform the well workover, Buchanan was still the designated operator, since Union Pacific did not submit its form to designate Levinson operator until March 8, 1993. (MMS Answer at 4.) As neither Buchanan nor Union Pacific had filed a Sundry Notice for well workover as required by 30 C.F.R. § 250.103(a), to the extent there was activity on the lease, it was unauthorized. (MMS Answer at 9, n.4.)

MMS acknowledges that the general purpose of the OCSLA is to develop OCS resources, but notes that the statute provides for only three contingencies — oil or gas is produced from the area in paying quantities, or drilling or well-reworking operations as approved by the Secretary are being conducted. Absent one of these three activities, the lease expires by operation of law, and lessees are on notice that termination will occur.

43 U.S.C. § 1337(b)(2) (1994). (MMS Answer at 7.) These statutory criteria are repeated in 30 C.F.R. § 256.37(b), as well as in the lease terms. MMS thus maintains that there was no production, drilling, or well reworking and the lease expired automatically.

Because Union Pacific in effect ignored its lease and failed to timely file any of the notices, requests, or designations required by law, MMS contends that it was proper to deny Union Pacific's request for a retroactive SOP, and that the decision to do so in this case is consistent with other Departmental decisions denying retroactive SOP's issued under similar provisions of the Mineral Leasing Act, 30 U.S.C. §§ 181-287, which have been affirmed by this Board. (Answer at 8.) Moreover, whether to grant a requested SOP is a matter of discretion, which in this case, MMS argues, was properly exercised. (Answer at 9.)

As to Levinson's activities near the end of the lease term, MMS responds that those activities do not, in any event, constitute workover operations sufficient to restore the productivity of the well, because the OCSLA refers only to well-reworking operations "as approved by the Secretary," 43 U.S.C. § 1337(b)(2) (1994), that may extend the primary term of the lease, and excepting routine operations, none are to occur until written approval is obtained. (Answer at 10.) Having failed to comply with these requirements, MMS argues that the Board should not encourage "`rogue' operators performing unauthorized activities on leases, with absolutely no compliance with MMS regulations." (MMS Answer at 11.)

[1] The expiration of the Appellants' lease could have been avoided, if at all, only if MMS had granted a retroactive SOP, which would have extended the lease term by a period equal to the period of the suspension and would therefore encompass Levinson's activities in December 1992 and January 1993. Appellants intend to avail themselves of one of the three activities under the OCSLA that could serve to extend the primary term, and thus they argue that Levinson's activities constituted well-reworking operations. Appellants have ignored one critical point that is dispositive of their appeal, however. It is well established that a lease cannot be suspended retroactively unless the request for a suspension is pending before the Department when the lease expires. As has been often stated, unless the request is made before the lease expires, there is nothing in existence which could be suspended. Mobil Producing Texas and New Mexico, Inc., 99 IBLA 5, 8 (1987); John March, 98 IBLA 143, 146-47 (1987); Fuel Resources Development Co., 69 IBLA 39, 41 (1982); Teton Energy Co., 61 IBLA 47, 49 (1981); Tenneco Oil Co., 44 IBLA 171 (1979); American Resources Management Co., 40 IBLA 195, 198 (1979); Jones-O'Brien, 85 I.D. 89, 94 (1978), and cases cited therein. No such request was filed before the lease expired. Thus, the lease expired on November 30, 1992.

We further find that the record clearly supports MMS' determination that the lease was not being diligently developed in the 14 months before it expired, a conclusion with which Appellants have no real quarrel. Whether due to its financial problems or other reasons, it appears that Buchanan did little on the lease after it ceased producing in August 1991. Although Sundry Notices to rework the well were filed in August and September 1991, the record does not show that Buchanan or Appellants thereafter diligently attempted to resume production, and Appellants do not argue or assert a contrary conclusion.

We also agree that Union Pacific's inattentiveness cannot fairly be dismissed as mere administrative oversight or that it can be attributed to Levinson's ignorance of regulatory requirements. Union Pacific is neither a newcomer to the oil and gas industry nor a novice in dealing with MMS regulations and procedures, 5/ and as the lessee of record, it was bound to take those steps it deemed necessary to ensure that development of the lease proceeded in a timely and consistent manner, if it wished to maintain the lease beyond its primary term. It did not do so, even though it knew of Buchanan's financial weakness as early as the middle of 1992. (Ex. 3, Solich Affidavit, ¶ 5.) It had ample time to ascertain the status of leasehold activities and needs and to request an SOP. We accept Appellants' claim that each party believed the other had filed a request for an SOP after Buchanan resigned as operator, but this does not explain why an SOP was not requested in the many months of apparent inactivity on the lease before November 1993, or how, knowing that the expiration date was imminent, Appellants overlooked confirming the one act that could preserve the lease in the circumstances of this case.

We further find that Levinson's "reworking" activities occurred after the lease expiration date. Levinson did no more than retain O&C in September 1992 and agree upon the procedure that was to be employed by O&C, as reflected in O&C's September 21, 1992, file memorandum. Appellants do not provide the date when O&C was engaged, but O&C did not go out to inspect the well until the latter part of November. (Ex. 3, O&C Affidavit, ¶ 3.) They returned to perform the swabbing procedure on December 8, 1992. In essence, it is Appellants' position that the acts of retaining O&C and agreeing upon a well-workover procedure before the lease expired constitute sufficient compliance with 30 C.F.R. § 250.13(a). The argument is neither compelling nor persuasive, however, because Levinson's activities were not the last in a series of sustained development activities underway since production ceased; to the contrary, Levinson's actions were merely the first in 13 months.

[2] In advancing their arguments, Appellants ignore the fact that Levinson was not, in any event, the designated operator. They would dismiss the requirement to formally designate operators as mere form over substance, arguing that MMS treated Levinson as if it was the operator. They overlook the fact that Buchanan did not even formally notify MMS that it had resigned until December 15, 1992, after Levinson had engaged O&C's services. Far from being a matter of form lacking substance, a formal designation is required because it signifies the lessee's intent and agreement that the operator named is authorized to act on behalf of the lessee to fulfill the lessee's legal obligations under the lease and

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5/ Union Pacific formerly operated as Champlin Petroleum Company. Champlin Petroleum Co., 100 IBLA 157, n.1 (1987). 149 IBLA xxx regulations. 30 C.F.R. §§ 250.8 and 250.13(c). Appellants' arguments concerning Levinson's position as an owner of a working interest therefore miss the point of such regulatory provisions.

There is no suggestion that Levinson could not, as a working interest owner, enter upon the leasehold to conduct drilling or other operations, or act as operator, once duly designated as such in the manner prescribed by the regulations. While it is true that a lessee may act through its operator and that diligence in developing the lease may be shown by the operator's performance of the lessee's leasehold obligations, these observations do not serve to establish a basis for recognizing the de facto designation of an operator here urged. For that reason, Appellants' allusion to the allegedly commonplace occurrence of filing Designation of Operator forms some time after the parties have reached their agreement, if such is the case, is not well-taken, because in this case there was no meaningful attempt to comply with the regulation. It should be noted, moreover, that Appellants are in error in asserting that no regulatory provision requires them to file the form "immediately." The regulation, 30 C.F.R. § 250.8, explicitly states that "any termination of the authority of the operator shall be reported immediately, in writing, to the Regional Supervisor." (Emphasis added.)

[3, 4] Appellants attempt to fashion fatal procedural missteps on MMS' part in questioning why the January 28, 1993, letter rescinding approval of Buchanan's last Sundry Notice was addressed to Buchanan after the date Buchanan had effectively resigned as operator, and not to Union Pacific or Levinson, and in noting that there was no evidence of a formal notice to Union Pacific or Levinson determining that the lease had expired. These arguments are also rejected. The January 28 letter was in fact notification that approval of the Sundry Notice submitted by Buchanan was revoked, and thus it was appropriately addressed to Buchanan. Moreover, at this time, MMS had no official notice of a change in operators. Since the lease had expired at the end of its primary term, there was no lease for which a Sundry Notice could be approved, and any action purporting to approve one perforce was a nullity. Appellants' suggestion that the approval signified MMS' general approval of the way in which they chose to participate in development of the lease is without merit and is therefore rejected. Accordingly, the letter was not a decision or formal notice that the lease had expired, as no such decision or notice is required to effect the expiration. It was only an explanation of why the approval of the Sundry Notice had been rescinded. Similarly, the acceptance of minimum royalty payments from Levinson has no bearing on whether the lease expired, because only "[p]roducing, drilling, or well-reworking operations" continue a lease in effect beyond its primary term. 30 C.F.R. § 250.13(a). There was no error in accepting royalty payments from Levinson, because it was an operating rights owner.

As lessee, Union Pacific is the responsible party and presumed to know the status of its lease. As this Board stated in Jerry Chambers Exploration Co., 107 IBLA 161, 163 (1989): "A lessee may designate an operator to act for the lessee in matters relating to lease operations, but this does not relieve the lessee from ultimate responsibility for compliance with the lease terms." See also Anadarko Petroleum Corp., 122 IBLA 141, 150 (1992), Supron Energy Corp., 45 IBLA 181, 192 (1980). Thus, whether Buchanan warned Union Pacific of the imminent lapse of the lease or not is immaterial. In short, it is the responsibility of the lessee and its operator to fulfill the regulatory conditions that may serve to extend the primary term, and that responsibility is not avoided even where MMS fails to act expeditiously. See Jones-O'Brien, Inc., supra. 6/ No such failure has been demonstrated in this case, however, as Appellants' decision not to formally pursue an SOP until March 1993, long after lease expiration, was their own. The Director appropriately considered the facts of the situation and applicable regulations. Consequently, it was not an abuse of discretion to deny the request for retroactive SOP. Deschutes River Public Outfitters, 135 IBLA 233 (1996). The Decision is affirmed.

To the extent not explicitly addressed herein, Appellants' other arguments have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

T. Britt Price
Administrative Judge

I concur:

R.W. Mullen
Administrative Judge

6/ To the extent Appellants attempt an argument for estoppel, it cannot be sustained. The principles governing consideration of estoppel questions are well-established. See, e.g., Mt. Gaines Consolidated, 144 IBLA 49, 51 (1998); Ptarmigan Co., 91 IBLA 113, 117 (1986), aff'd sub nom. Bolt v. United States, 944 F.2d 603 (9th Cir. 1991). As we reiterated in James W. Bowling, 129 IBLA 52 (1994), to constitute affirmative misconduct sufficient to justify estoppel, a misrepresentation must be made in the form of a crucial misstatement in an official written decision. RDGOM MMS may have encouraged Appellants to file a request, but such does not constitute a promise to grant the request or to grant it on the terms sought, and it certainly does not rise to the level necessary to invoke estoppel.